

**REMARKS**

Claims 1-24 were originally filed in the present application.

Claims 1-24 are pending in the present application.

Claims 1-4, 6-11 and 18-23 were rejected in the May 25, 2005 Office Action.

Claims 5, 12, 17 and 24 were objected to in the May 25, 2005 Office Action, but were deemed allowable if rewritten in independent form.

Reconsideration of Claims 1-24 in view of the following arguments is respectfully requested.

**35 U.S.C. §103(a) Rejections**

In Section 1 of the May 25, 2005 Office Action, the Examiner rejected Claims 1-3, 6-8, 11, 13-15, 18-20 and 23 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Application Serial No. 09/048,742 (Publication No. US 2001/0049263) to *Zhang* (hereafter, "*Zhang*") in view of U.S. Patent Application Serial No. 09/733,402 (Publication No. US 2002/0070753) to *Vogel et al.* (hereafter, "*Vogel*").

In Section 2 of the May 25, 2005 Office Action, the Examiner rejected Claims 4, 9, 16 and 21 under 35 U.S.C. §103(a) as being unpatentable over the *Zhang* and *Vogel* references in view of U.S. Patent No. 6,333,973 to *Smith et al.* (hereafter, "*Smith*").

In Section 3 of the May 25, 2005 Office Action, the Examiner rejected Claims 10 and 22 under 35 U.S.C. §103(a) as being unpatentable over the *Zhang* and *Vogel* references in view of U.S. Patent No. 6,757,521 to *Ying* (hereafter, "*Ying*").

The Applicants respectfully disagree with the rejections of Claims 1-4, 6-11 and 18-23 and direct the Examiner's attention to Claim 1, which contains the unique and non-obvious limitations emphasized below:

1. For use in a wireless network comprising a plurality of base stations, each of said base stations capable of communicating with a plurality of mobile stations, a mobile station diagnostic testing system capable of testing the operation of a first one of said plurality of mobile stations comprising:

a database capable of storing a mobile station diagnostic testing file comprising a mobile station diagnostic testing program in interpreted byte-code format; and

a diagnostics controller coupled to said database capable of receiving a notification indicating that a fault has occurred in said first mobile station and further capable, in response to receipt of said notification, of retrieving said mobile station diagnostic testing file from said database and transmitting said mobile station diagnostic testing file to said first mobile station, wherein receipt of said mobile station diagnostic testing file causes said mobile station to execute said mobile station diagnostic testing program in said mobile station diagnostic testing file. (emphasis added)

The Applicants respectfully assert that the above-emphasized limitations are not disclosed, suggested, or even hinted at in the *Zhang* reference, the *Vogel* reference, the *Smith* reference, or the *Ying* reference, or in any combination of the *Zhang*, *Vogel*, *Smith* and *Ying* references.

In rejecting Claim 1, the Examiner asserted that the *Zhang* reference discloses, among other things, a diagnostics controller that retrieves a mobile station (MS) diagnostic testing file from a database and transmits the MS diagnostic testing file to a first mobile station. The Examiner admitted that the *Zhang* reference does not disclose the interpreted byte-code format of the MS diagnostic testing file as recited in Claim 1. However, the Examiner asserted that the *Vogel* reference discloses an MS diagnostic testing file in interpreted byte-code format and that receipt of

the MS diagnostic testing file causes the mobile station to execute the diagnostic testing file. The Examiner then asserted that the combination of the *Zhang* reference and the *Vogel* reference renders Claim 1 obvious.

The Applicants respectfully assert that the Examiner has misunderstood the teachings of the *Zhang* reference and the *Vogel* reference. In fact, neither the *Zhang* reference nor the *Vogel* reference discloses an MS diagnostic testing file that is transmitted to a mobile station and neither reference discloses that receipt of the MS diagnostic testing file causes the mobile station to execute a diagnostic testing program in the MS diagnostic testing file.

In rejecting Claim 1, the Examiner asserted that Paragraphs 13-17 of the *Zhang* reference disclose a diagnostics controller that retrieves a mobile station (MS) diagnostic testing file from a database and transmits the MS diagnostic testing file to a first mobile station. The Applicants respectfully disagree. The *Zhang* reference discloses a mobile station monitoring system that receives error and performance data from mobile stations. See Paragraph 13 of the *Zhang* reference. Upon receipt of the performance and error information, the monitoring system of the *Zhang* reference analyzes the performance and error information and may re-transmit the performance and error information to the mobile station manufacturer. See Paragraph 14 of the *Zhang* reference.

The monitoring system of the *Zhang* reference may then transmit instructions to certain classes of mobile stations to adjust the parameters of the software contained in the mobile stations in order to improve performance or overcome errors that may be occurring. See Paragraph 15 of the *Zhang* reference. However, the Applicants note that these instructions are not a diagnostics testing

file. These instructions are, in fact, a software patch or an upgrade that fixes a problem. The *Zhang* reference further discloses that a software upgrade may also be applied by means of a non-volatile memory that is attached to a data port of the mobile station. The memory contains the software upgrade, which is then applied to the mobile unit. See Paragraph 16 of the *Zhang* reference.

The Applicants note that diagnostic testing is an operation that precedes the application of a patch or an upgrade. These are not equivalent operations. The purpose of the MS diagnostic testing file recited in Claim 1 is to test the operation of the first mobile station in order to identify a specific cause of an error. The first mobile station does not contain a diagnostic testing file, due to memory constraints or other reasons. Hence, the diagnostics controller recited in Claim 1 provides a diagnostic testing capability only when it is needed (i.e., when an error occurs). Upon receipt of the MS diagnostic testing file, the first mobile station recited in Claim 1 executes the MS diagnostic testing program in the MS diagnostic testing file. This enables the first mobile station to more specifically identify the source of an error. Application of a software patch or an upgrade program, if any, occurs after diagnostic testing.

The Applicants respectfully assert that neither the *Zhang* reference nor the *Vogel* reference discloses the transmission of such an MS diagnostic testing file from a network monitoring system to a first mobile station. Also, neither reference discloses that receipt of the MS diagnostic testing file causes the first mobile station to execute a diagnostic testing program in the MS diagnostic testing file.

As such, the unique and non-obvious limitations emphasized in Claim 1 above are nowhere disclosed in the *Zhang* reference or the *Vogel* reference, or in a combination of the *Zhang* reference and the *Vogel* reference. Furthermore, the *Smith* reference and the *Ying* reference do nothing to overcome the shortcomings of the *Zhang* and *Vogel* references. The *Smith* reference and the *Ying* reference were introduced to disclose short messaging service (SMS) messages, a graphical user interface (GUI) program, and other dependent claim limitations. But the *Smith* reference and the *Ying* reference are silent with respect to the unique and non-obvious limitations emphasized in Claim 1 above.

In sum, independent Claim 1 contains patentable subject matter over the *Zhang* reference, the *Vogel* reference, the *Smith* reference, and the *Ying* reference, and any combination of the *Zhang*, *Vogel*, *Smith* and *Ying* references. Also, dependent Claims 2-5 depend from Claim 1 and contain all of the unique and non-obvious limitations recited in Claim 1. Thus, Claims 2-5 also are patentable over the cited prior art references.

Independent Claims 6, 13 and 18 contain limitations that are analogous to the unique and non-obvious limitations recited in independent Claim 1. This being the case, Claims 6, 13 and 18 are patentable over the *Zhang* reference, the *Vogel* reference, the *Smith* reference, and the *Ying* reference, and any combination of the *Zhang*, *Vogel*, *Smith* and *Ying* references. Furthermore, dependent Claims 7-12, which depend from Claim 6, dependent Claims 14-17, which depend from Claim 13, and dependent Claims 19-24, which depend from Claim 18, contain all of the unique and non-

obvious limitations recited in Claims 6, 13 and 18, respectively. Thus, dependent Claims 7-12, 14-17 and 19-24 also are patentable over the cited prior art references.

The Applicants also disagree with the Examiner's rejections of Claims 2-4, 6-11 and 18-23 based on additional misdescriptions and/or misapplications of the *Zhang*, *Vogel*, *Smith* and *Ying* references to at least some of Claims 2-4, 6-11 and 18-23. However, the Applicants' arguments regarding those other shortcomings of the *Zhang*, *Vogel*, *Smith* and *Ying* references are moot in view of the Claim 1 arguments above. However, the Applicants reserve the right to dispute in future Office Action responses the appropriateness and the applications of the *Zhang*, *Vogel*, *Smith* and *Ying* references to the claims of the present application, including the right to dispute assertions made by the Examiner in the May 25, 2005 Office Action.

**SUMMARY**

For the reasons given above, the Applicant respectfully requests reconsideration and allowance of pending claims and that this Application be passed to issue. If any outstanding issues remain, or if the Examiner has any further suggestions for expediting allowance of this Application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at *jmockler@davismunck.com*.


The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Deposit Account No. 50-0208.

Respectfully submitted,

DAVIS MUNCK, P.C.

Date: 25 August 2005

P.O. Drawer 800889  
Dallas, Texas 75380  
Phone: (972) 628-3600  
Fax: (972) 628-3616  
E-mail: *jmockler@davismunck.com*

  
\_\_\_\_\_  
John T. Mockler  
Registration No. 39,775